

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
 ) CASE NO. CR20-092 JCC  
Plaintiff, )  
 )  
v. )  
 ) ORDER DENYING REQUEST TO  
JOSE DANIEL ESPINOZA, ) REOPEN DETENTION ORDER  
 )  
Defendant. )  
\_\_\_\_\_ )

Defendant has been indicted on a charge of Conspiracy to Distribute Controlled Substances (Dkt.1.) Defendant was detained by this Court following a detention hearing. (Dkt. 145.) Defendant recently moved to reopen the detention order. (Dkt. 321.) The motion was denied. (Dkt. 329.)

Defendant again moves to reopen this Court's detention order (Dkt. 337.). In support of his motion, defendant proffers his covid-positive status and difficulties with attorney-client telephone communication due to quarantine measures taken by the FDC in response to positive

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01 covid-19 testing among inmates and staff. The government opposes the motion. (Dkt. 340.)  
02 This motion was referred by The Honorable John C. Coughenour to the undersigned for  
03 decision. The Court finds the motion appropriate for decision without oral argument.

04 A request to reopen a detention hearing is based on 18 U.S.C. § 3142(f)(B), which  
05 provides that a detention hearing may be reopened “if the judicial officer finds that information  
06 exists that was not known to the movant at the time of the hearing and that has a material bearing  
07 on the issue whether there are conditions of release that will reasonably assure the appearance  
08 of such person as required and the safety of any other person and the community.” *Id.*

09 Without deciding if defendant’s covid-positive status and restrictions on attorney-client  
10 telephone communication due to quarantine measures at the FDC are sufficient grounds to  
11 reopen the detention hearing under 18 U.S.C. § 3142(f)(B), the Court again finds defendant has  
12 failed to rebut the presumption he poses both a risk of nonappearance and a risk of danger. To  
13 control the exposure of inmates and staff and the spread of the corona virus within the facility,  
14 the FDC has temporarily adopted restrictions on non-emergency phone calls, including legal  
15 calls, to minimize movement of individuals. This decision was based on the identification of  
16 this movement as one likely vector for the spread of the virus within the facility. While these  
17 quarantine measures have temporarily affected the nature and frequency of attorney-client  
18 telephone communication, the government notes inmates may continue to receive and send  
19 legal mail.

20 Trial in this case is currently set for October 4, 2021. Defendant does not contend  
21 these restrictions have unconstitutionally affected his right to prepare for trial and, indeed, it  
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01 would be difficult to give credence to such an argument given the reality that no in-person  
02 criminal jury trials are currently being conducted in this District. Instead, defendant argues the  
03 restrictions on access to telephone calls has affected the ability of his attorney to assure  
04 defendant is “safe and being provided adequate medical care.” (Dkt. 337 at 5.) In response,  
05 the government notes the availability of the Freedom of Information Act to defense counsel to  
06 obtain updated information regarding the health of a client, and the agreement of the Bureau of  
07 Prisons and the U. S. Attorneys Office to inform counsel if any inmate requires hospitalization  
08 because of symptoms of the virus. As of this date, neither defendant nor any other inmate has  
09 been hospitalized for this reason.

10 Further, defendant does not succeed in rebutting the presumption he poses both a risk  
11 of flight and a risk of danger. As noted in the Court’s detention order and its previous order  
12 denying reopening (Dkt. 145, 329), defendant’s criminal record shows multiple incidents of  
13 violation of supervision, as well as allegations of actions on behalf of the conspiracy involving  
14 violence or threats of violence. Defendant fails to make the required showing that would  
15 justify reopening the Court’s determination that defendant poses a risk of danger and a risk of  
16 nonappearance.

17 Defendant’s motion to reopen the detention hearing is DENIED.

18 DATED this 23rd day of December 2020.

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20 Mary Alice Theiler  
21 United States Magistrate Judge  
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